



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200951044

SEP 24 2009

U.I.L. 408.03-00

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XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

SET: EP: RA: T3

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXXXXX  
IRA X = XXXXXXXXXXXXXXXXXXXXXXXX  
  
Bank B = XXXXXXXXXXXXXXXXXXXXXXXX  
Amount D = XXXXXXXXXXXXXXXXXXXXXXXX  
Company E = XXXXXXXXXXXXXXXXXXXXXXXX  
Date F = XXXXXXXXXXXXXXXXXXXXXXXX  
Date G = XXXXXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxxxx:

This letter is in response to your letter dated xxxxxxxxxx, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A represents that he received a distribution from IRA X totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was because the 60<sup>th</sup> day fell on a Sunday. Taxpayer A further asserts that Amount D has not been used for any other purpose.

Taxpayer A maintained IRA X with Bank B. On Date F Taxpayer A received a distribution from IRA X in the amount of Amount D. Taxpayer A intended to make use of the distribution, Amount D, as a down payment towards the purchase of his own home as he was going through a painful divorce and wanted to have his own home.

Taxpayer represents that Company E did not approve his loan and he deposited Amount D back into IRA X on Date G- 1 day late because the 60<sup>th</sup> day fell on a Sunday and he deposited Amount D on Date G, the next business day.

Based upon the foregoing facts and representations, Taxpayer A requests that the Service waive the 60 day rollover requirement with respect to the distribution of Amount D from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distribute, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i)

from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a rollover of Amount D was because the 60<sup>th</sup> day fell on a Sunday. Further, Taxpayer A acted promptly in conformance with the 60-day rollover requirements and re-deposited Amount D into a rollover IRA and completed the rollover on the next business day after the expiration of the 60-day period.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

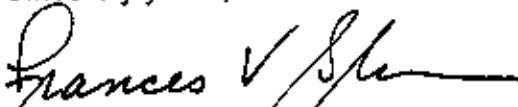
No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

200951044

If you have any questions concerning this ruling, please contact xxxxxxxxxx,  
xxxxxxxxxxxxxxxxxx, SE: T: EP: RA: T3, at xxxxxxxxxxxxxxxxx.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Frances V. Sloan", with a long horizontal flourish extending to the right.

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling  
Notice 437